

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),  
Table of Allotments,  
Digital Television Broadcast Stations.  
(Corpus Christi, Texas)

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MM Docket No. 99-277  
RM-9666

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: November 13, 2003**

**Released: November 19, 2003**

By the Chief, Video Division:

1. At the request of Channel 3 of Corpus Christi, Inc. ("Channel 3"), licensee of station KIII, NTSC channel 3, Corpus Christi, Texas, the Commission has before it the Notice of Proposed Rule Making, 14 FCC Rcd 15242 (1999), proposing the substitution of DTV channel 8 for station KIII's assigned DTV 47. The University of Houston System ("UHS"), licensee of noncommercial educational television station KUHT, NTSC channel \*8 submitted the only timely filed comments in this proceeding. Channel 3 filed comments requesting the adoption of its proposal.<sup>1</sup> Sound Leasing ("Sound Leasing") filed comments<sup>2</sup>. UHS and Alamo Public Telecommunications Council ("Alamo"), licensee of station KLRN, NTSC channel \*9, San Antonio, Texas, filed reply comments.<sup>3</sup> Minerva Lopez filed a Motion to accept late filed

<sup>1</sup> Channel 3 late-filed comments will be accepted for the purpose of permitting a continuing expression of interest in the substitution of DTV channel 8 for its assigned DTV channel 47 at Corpus Christi. Our general policy is to refuse to accept a late-filed expression of interest, unless the proceeding is uncontested. *See Santa Isabel, Puerto Rico*, 3 FCC Rcd 2336 (1988). Although this proceeding is arguably contested due to the filing of opposition pleadings, we make an exception to the general rule of refusing to accept late-filed expressions of interest because the oppositions are either procedurally or substantively defective. *See Ocilla, Georgia*, 3 FCC Rcd 4765 (1988).

<sup>2</sup> Sound Leasing, licensee of KTOP-LP, Corpus Christi, submitted its opposition three days after the deadline for filing oppositions. The opposition consists of a statement that adoption of Channel 3's channel change would cause the loss of channel 7 to KTOV-LP. Sound Leasing claims that if KTOV could co-locate channel 7 with DTV channel 8 and continue operation, Sound Leasing would agree to withdraw its opposition. In reply, Sound Leasing requests that its opposition be dismissed without prejudice. However, several months after the pleading cycle ended, Sound Leasing submitted an Ex Parte Statement, a Opposition to Petition for Leave To File Supplemental Reply Comments, and Supplemental Reply Comments. These untimely pleadings, which raise no new arguments in opposition to Channel 3's petition, will not be considered in accordance with Section 1.415(b) and (d) of the Commission's Rules.

<sup>3</sup> Alamo, licensee of noncommercial station KLRN, NTSC channel \*9, San Antonio, Texas, did not file initial comments but filed reply comments stating it does not object to Channel 3's proposal. Alamo states that it intends to file its own petition to amend the DTV Table of Allotment proposing the substitution of DTV channel 8 for DTV channel 20 at San Antonio. Alamo claims that KLRN-DT operating on DTV channel 8 would cause 0.4% of additional interference to the coverage that KIII-DT operating on DTV Channel 8 would otherwise have

comments.<sup>4</sup>

2. UHS states that it does not oppose Channel 3's channel substitution, but notes its concern about the phenomenon known as "Gulf Coast skipping" (also known as "skipping stone effect") and related troposphere ducting. Gulf Coast skipping, according to UHS, and related terms refer to the over-the-horizon (*i.e.* beyond line-of-sight) propagation of radio signals caused by temperature inversion along the Gulf Coast. UHS claims that viewers in Beaumont (which receives station KUHT from a cable system) have received a co-channel television signal from a channel 8 television station in Florida or Laredo, Texas, due to Gulf Coast skipping. UHS states that it has experienced the effects of Gulf Coast skipping and believes other television stations along the Gulf Coast would report similar experiences. UHS submits printouts from various web-sites attesting to the existence of the phenomenon of "skipping stone effect" or troposphere ducting and its impact well beyond the traditional "line-of-sight" limitations on signal propagation. UHS suggests that if Gulf Coast skipping does occur and results in interference to KUHT or KUHT-DT due to the Channel 3's channel substitution, the licensee of station KIII should be required to ameliorate the problem. Moreover, UHS requests that the Commission acknowledge now that, if the interference problems from Channel 3 operating on DTV channel 8, it will consider other long-term solutions to eliminate interference, by imposing power reduction or a directional zed antenna on station KIII.

3. In response, Channel 3 states that the so-called "skipping" phenomenon was considered by the Commission when it adopted special separations for allotments in Zone III - which includes Corpus Christi, Houston and Beaumont. In addition, it submits that the Commission chose not make a distinction between Zone II and Zone III. Channel 3 also states that if interference occurs beyond the station KUHT protected contour, the more appropriate course of action would be for UHS to convince the cable operator to improve the receiving antenna at the head end or to establish a new intermediate microwave hop.

### Discussion

4. After careful review of all the information presented in this proceeding, we conclude that the public interest would be served by adopting Channel 3's channel substitution since it will enable station KIII to replicate a larger portion of its existing service area and reduce its equipment expenses during the DTV transition. We further decline to condition our Order with respect to the "Gulf Coast Skipping" or "ducting" as requested by UHS. Simply put, ducting is a phenomenon whereby a radio signal is trapped within and between stratified layers of the atmosphere, which has non-uniform refractivity indexes. This layer is caused by climatologically processes such as temperature inversions or surface heating and radiative cooling. The ducts

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We note that on October 5, 2001, the Commission adopted a *Report and Order*, see 16 FCC Rcd 17903 (2001), substituting DTV channel \*8 for station KLRN-TV's assigned DTV channel \*20 at San Antonio, Texas

<sup>4</sup> Minerva Lopez, licensee of KTMV-LP, channel 8, Corpus Christi, Texas, filed her comments 15 months after the pleading cycle closed. We will not accept these untimely filed comments, since the Commission's Rules do not contemplate the filing of pleadings beyond the comment period set forth in Notice of Proposed Rule Making.

created by these factors may cause a station's signal to extend for substantial distances beyond its normal coverage area. Ducting is a weather-related phenomenon and may be highly variable in both direction and intensity. We recognize that the highly variable phenomenon of ducting may occur near or over water. The evidence presented by UHS to support its contention that ducting is likely to occur here, however, is not persuasive or probative. First, the contention by UHS refers to reception of its signal on a cable system in a community outside of station KUHT(TV) Grade B contour. Second, any number of technical factors, including problems at the cable head end, may have been responsible for the described problem. Third, the Channel 3 substitution proposal complies fully with the Commission's technical rules. Thus, we find no basis for imposing any special condition on the proposed allotment. Any such condition would be pure speculation without technical support. Accordingly, we deny UHS' s request.

5. DTV channel 8 can be allotted to Corpus Christi, Texas, in compliance with the principle community coverage requirements of Section 73.623(a) at coordinates (27-39-30 N. and 97-36-04 W.). Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment. In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station KIII with the following specifications:

<u>State &amp; City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
TX Corpus Christi	8	160	289	491

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 5, 2004, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Corpus Christi, Texas	8, 18, *23, 27, 50

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Channel 3 of Corpus Christi, Inc. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 8 in lieu of DTV Channel 47 for station KIII

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Media Bureau, (202) 418-1600.

**FEDERAL COMMUNICATIONS COMMISSION**

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau